

**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

MONA G RIEKKI,

Plaintiff,

VS.

Case No.: 2:15-cv-02434-GMN-GWF

BAYVIEW FINANCIAL LOAN  
SERVICING, *et al.*,

Defendants.

## ORDER

Pending before the Court is the Motion to Dismiss (ECF No. 8) filed by Defendant Bank of America, N.A. (“Defendant”). Also before the Court is Plaintiff Mona G. Riecki’s (“Plaintiff”) Motion to Amend the Complaint. (ECF No. 11). Neither party filed a response to the motions, and the time to do so has passed. For the reasons discussed below, the Court **DENIES** Defendant’s Motion to Dismiss and **GRANTS** Plaintiff’s Motion to Amend the Complaint.

## I. BACKGROUND

Plaintiff filed the instant action in state court, seeking damages for alleged violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681, *et seq.* (Compl., Ex. A to Pet. for Removal, ECF No. 1). Defendant Experian Information Solutions, Inc. removed the case to this Court, citing federal question jurisdiction pursuant to 28 U.S.C. § 1331. (*Id.*).

On December 30, 2015, Defendant filed the instant Motion to Dismiss, arguing that the Complaint should be dismissed because “Plaintiff has not alleged that Bank of America furnished any inaccurate information regarding [Plaintiff’s Bank of America credit accounts] to Experian.” (MTD 9:4–6, ECF No. 8). Shortly thereafter, on January 16, 2016, Plaintiff filed the instant Motion requesting leave to file an Amended Complaint which “more clearly

1 presents the factual inaccuracies that the named defendants reported on Plaintiff's credit report  
2 and the reporting industry standards and guidelines with which defendants failed to comply."  
3 (Mot. to Amend Compl. 3:4–7, ECF No. 11).

## 4 **II. LEGAL STANDARD**

5 Federal Rule of Civil Procedure 15(a)(1)(A) allows a party to amend its pleading once as  
6 a matter of course within 21 days after serving it. Fed. R. Civ. P. 15(a)(1)(A). If the pleading is  
7 one to which a responsive pleading is required, the party may also amend within "21 days after  
8 service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or  
9 (f), whichever is earlier." Fed. R. Civ. P. 15(a)(1)(B).

10 Once the time period to amend as a matter of course in Rule 15(a)(1) of the Federal  
11 Rules of Civil Procedure has passed, "a party may amend its pleading only with the opposing  
12 party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). However, Rule 15(a)(2)  
13 further instructs that courts "should freely give leave [to amend] when justice so requires." *Id.*  
14 "In the absence of any apparent or declared reason—such as undue delay, bad faith or dilatory  
15 motive on the part of the movant, repeated failure to cure deficiencies by amendments  
16 previously allowed, undue prejudice to the opposing party by virtue of allowance of the  
17 amendment, futility of amendment, etc.—the leave sought should, as the rules require, be  
18 'freely given.'" *Foman v. Davis*, 371 U.S. 178, 182 (1962).

## 19 **III. DISCUSSION**

20 The Court finds that there is more than an adequate basis to grant Plaintiff's Motion to  
21 Amend (ECF No. 11) pursuant to Rule 15. No defendant has yet answered the Complaint,  
22 Plaintiff has not yet amended it, and Plaintiff filed the motion to amend only seventeen days  
23 after Defendant filed its Motion to Dismiss (ECF No. 8), which is the first motion to dismiss  
24 that any defendant has filed in this case. Plaintiff therefore has the right to amend the  
25 Complaint as a matter of course and need not have requested permission to amend. *See* Fed. R.

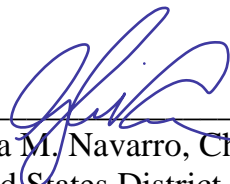
1 Civ. P. 15(a)(1)(B). Nevertheless, the Court grants Plaintiff's Motion to Amend (ECF No. 11)  
2 and denies as moot the Defendant's Motion to Dismiss (ECF No. 8).

3 **IV. CONCLUSION**

4 **IT IS HEREBY ORDERED** that Plaintiff's Motion for Leave to File a First Amended  
5 Complaint (ECF No. 11) is **GRANTED**. Plaintiff shall have fourteen days from the filing date  
6 of this Order to file her First Amended Complaint.

7 **IT IS FURTHER ORDERED** that the pending Motion to Dismiss (ECF No. 8) is  
8 **DENIED without prejudice** as moot.

9 **DATED** this 2 day of June, 2016.

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13 Gloria M. Navarro, Chief Judge  
14 United States District Court  
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